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NUMBER 90-1154

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IN THE SUPREME COURT OF THE UNITED STATES

January Term, 1991

LOUIS JAMES SCOTT
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

RESPONSE TO GOVERNMENT'S BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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RESPONSE TO QUESTION PRESENTED BY GOVERNMENT

The real question is whether a judgment may be entered under Section 6672 which exceeds the maximum amount authorized by congress and later be supervised and interpreted, not by the judiciary, but by the executive branch for fairness and/or modification.

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REPLY TO GOVERNMENT'S STATEMENT

The court of appeals did not reverse the Judgment which held Scott individually liable. The trial judgment does not make the parties jointly and severally liable as the statute requires. (Response to Gov. Statement pg. 3, para. 4.) The published decision of the Fifth Circuit indirectly indicates that this

requirement is handled by the regulations of the administrative agency. This is not, however, the key issue in Petitioner's request for a Writ of Certiorari.

The "fees" of $9.00 (Gov. Statement pg. 2 and footnote one) must be supported by statute. There is no statute that allows "plus fees". Although this specific amount is diminimus, the passing statement, emphasized with a footnote, does reflect the Government's real contention, that a tax may be levied without statutory basis.

In other respects, the Government's Statement does not conflict with the Petitioner's.

REPLY TO GOVERNMENT'S ARGUMENT

There is no provision in Section 6672 allowing for a judgment for more money

than the withholding due at the time of trial.

Simultaneous collection from several sources does not anticipate the right to a full and final unappealable judgment for more than the law allows.

The existing judgment is conceded by the Government to be more than the law allows the IRS to collect.

The government still fails to mention a statute or case or even reasoning authorizing this admittedly inflicted judgment.

The administrative remedy cited by the Government is not a post-judgment remedy but if this Court finds that it is, then the administrative remedy should be ruled unconstitutional. It would not be good practice to allow the juciciary

to be interpreted and/or regulated by the executive branch.

None of the cases cited by the Government hear any relationship to post judgment remedies, only prejudgment remedies. The Government's interpretation of the cases and regulations are essentially correct with egard to pre-judgment remedies, but when they attempt to go behind a final court judgment, they have no bearing on the case at bar.

A careful reading of the administrative remedy 5755.2 through 5756 (regulations cited by the Government for the first time in their reply brief) leaves no doubt that all of these abatement remedies for refund deal with Pre-Final Judgments. In fact, the procedures manual tells what to do prior to litigation. It does not address post

judgment remedies. If it did, the authority would be unconstitutional.

The Government misstates USLIFE Insurance Co. v. Harbison. (784 F.2d 1238) First, Harbison concerned a pre-judgment claim. Second, the Government lost at trial on the substantive issue. The only issue on appeal was legal fees. On this issue, the Government prevailed.

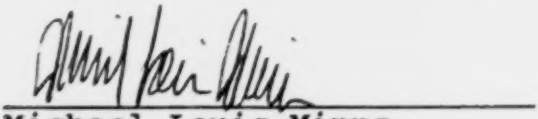
The Appellate Court held that the Government's error in over-collecting was deemed not to rise to the level of unreasonable conduct which would compel the payment of the legal fees by the government to the prevailing tax payer.

CONCLUSION

The Government's Brief in Opposition fails to address the issue of post

judgment relief and argues the law prior to judgment. The Government concedes it is not entitled to the judgment amount. A Writ of Certiorari should be granted.

Respectfully submitted,



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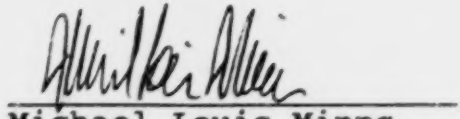
CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the above document was served to each of the following: Kenneth W. Starr, Solicitor General; Shirley D. Peterson, Assistant Attorney General; and Attorneys William S. Estabrook and Doris D. Coles by U. S. Postal Service, Certified Mail, Return Receipt Requested on this the 12th day of March, 1991.



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